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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,657	10/17/2003	John V. Marlow	T8465812US1	9797

7590 02/08/2005

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CANADA

EXAMINER

ASHLEY, BOYER DOLINGER

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/686,657

Applicant(s)

MARLOW ET AL.

Examiner

Boyer D. Ashley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9,11-13,15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9,11-13,15 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

1. This office action is in response to applicant's amendment filed 10/19/04, wherein claims 1-8, 10, 14, 16, 18-22 are canceled; and claims 9, 11, 12, 13, and 15 were amended.

### *Claim Objections*

2. Claim 9 is objected to because of the following informalities:

On line 8, "rolls" should be "roll". Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9, 11-13, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stemmler, U.S. Patent 5,022,295, in view of Kalwaites, U.S. Patent 3,881,381.

Stemmler discloses the invention substantially as claimed including, e.g.,: a cutting roll (2) and an opposing anvil roll (3); a means for journaling the rolls (16, 18, 19); a conveying means (column 3, lines 45-50, inherent); and a heating means (cartridges 56/57) for the blades, cutting roll, and anvil roll (column 3, lines 5-20) mounted within the rolls (column 5, lines 5-20). Stemmler discloses heating the entire punching device to the temperature required by the workpiece; but is silent as the specific temperature range.

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Kalwaites, however, discloses that it is old and well known in the art to use similar workpieces as Stemmler with conveying elements and heated forming rolls as well as a specific temperature between 160 to 300 degrees Celsius, more specifically 280 to 425 degrees Fahrenheit depending upon the specific workpiece for the purpose of facilitating movement of the workpiece between the forming rolls as well as facilitating forming of the film. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a workpiece conveyor and specific temperature of 160 to 300 degrees Celsius depending upon the type of workpiece being used with the device of Stemmler.

It should be noted that the recitations to the specific workpiece do not serve to distinguish the claimed invention from the prior art of record. In apparatus claims, the work piece is not given any patentable weight, because it has been held that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, the modified device of Stemmler is fully capable of being used with unpapered freshly pasted expanded, punched or cast lead or lead alloy mesh strip whether or not the device would function perfectly or not.

### ***Response to Arguments***

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Response to Amendment***

6. The Declaration under 37 CFR 1.132 filed 10/19/04 is insufficient to overcome the rejection of claims 9, 11-13, 15, and 17 based upon Chen as set forth in the last Office action because: the declaration is directed to the specifics of the workpiece in Chen and the current claims are apparatus claims. As stated upon in apparatus claims the specific workpiece does not serve to distinguish the claimed invention from the prior art. Although the rejection of the claims with Chen and Roberts is no longer being applied, it should be noted that it was deemed unnecessary in light of the applicant's amendments and the newly found art. Furthermore, the Declaration is merely the applicant's opinion.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The provided prior art references are cited to show similar devices.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the


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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 571-272-4502. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Boyer D. Ashley  
Primary Examiner  
Art Unit 3724

BDA  
February 3, 2005